

# Procedural Information for Conservators & Guardians

## Serving in Davidson County Seventh Circuit Court (Probate Division)

**PLEASE NOTE:** This procedural information guide is provided to you only as a courtesy of the Probate Court Clerk's Office as they are not required to furnish you with any information concerning your role, duties or responsibilities as a fiduciary. At your earliest convenience you should consult with your attorney to discuss the statutory duties and responsibilities which you must perform as the court-appointed fiduciary. After you have discussed these procedures with your attorney and if you have any questions or concerns, you should address those issues immediately with your attorney. If you feel you may have any difficulties performing your duties, you should notify your attorney immediately. Do not delay in notifying your attorney of your concerns as this may result in serious problems at a later date. You should never contact the Clerk's Office to discuss legal matters involving this estate. You must always consult your attorney.

Should you have any questions regarding the management of this estate, you must consult your attorney for that information. The information provided in this guide pertains to matters affecting **this office only**.

The attorney who filed your petition is recognized by this Court as the attorney of record for the duration of this matter. The only way your attorney of record may be removed is by the Court allowing for the substitution of another attorney of record by court Order.

Once you are appointed the fiduciary for this respondent, you become responsible for many different areas of concern which may or may not arise during the duration of this matter. If a legal issue should develop, you should contact your attorney and not the Clerk's Office. As much as the Clerk's Office would like to help you, they are not allowed to answer questions regarding legal matters on your case. For any legal information or assistance, you must consult your attorney.

You further need to understand that there are many situations which may arise during the administration of this matter about which the Clerk cannot warn you ahead of time. Therefore, you should always keep your attorney informed of any circumstances which may require assistance. There are also many other issues which are not discussed in this procedural guide which may or may not arise during the duration of this matter. Your attorney will be very helpful to you if such a situation should develop.

Upon being appointed as the fiduciary for this respondent, you are now charged and responsible for performing certain duties to properly manage the respondent's estate. Remember, even though, you have been appointed Fiduciary, this appointment comes with limitations. You may have been appointed to be the fiduciary to make medical and

personal living decisions for someone as well as having the authority to manage and control his/her assets. On the other hand, you may have just been appointed to make medical and personal decisions alone with no authority over the assets. You should discuss any and all parameters and limitations with your attorney and understand them completely.

After your court appearance, you must appear before the Clerk of this Court to take your **Fiduciary Oath** that you will properly perform your duties as the fiduciary to the best of your ability. You must also make arrangements to secure a **Surety Bond** if the Court has ordered such.

Once you have qualified, the Clerk will issue to you a document or letter of authority which evidences your authority to act on behalf of the ward. This document is referred to as either **Letters of Conservatorship** or **Letters of Guardianship** or **Letters Trusteeship** as the case may be.

If you feel there are certain issues which have not been addressed by the Court regarding your authority, you should consult your attorney.

## **Inventory and Accountings**

**Inventory:** Within sixty (60) days of your appointment as fiduciary you must file an Inventory of the respondent's assets. If this duty is not performed in accordance with the statute, the Clerk will mail you a notice. For your convenience, an Inventory form is posted in the "Forms" section of the probate web page. A copy of the Inventory should be mailed to all interested parties of the respondent's estate with a **Certificate of Service** attached to it. You must contact your attorney if you have questions as to what should or should not be included on the Inventory form.

**Annual Accountings:** Every year, within sixty (60) days of the anniversary date of your appointment as the fiduciary, you must begin filing Annual Accountings with the Clerk. A copy of all Accountings must be mailed to all interested parties of the respondent's estate with a **Certificate of Service** attached to it. When submitting your accounting (either annual or final), the Clerk prefers that you utilize the Accounting cover sheet provided by their office and available either over the counter or in the "Forms" section of the probate web page. In addition, the Clerk makes available a checkbook register-type form which can be attached to the cover sheet to assist you in listing individual transactions. Of course, the Clerk also accepts your accountings printed from various computer software programs. If you do not file the accountings at the appropriate time, you will be sent a Notice.

Please do not contact the Clerk's Office in order to extend the accounting period. In order to extend the accounting period, your attorney should ask the Court for a continuance

by filing a Motion.

Pursuant to Tennessee Code Annotated § 34-1-131, make sure your Annual Accounting contains the following information:

1. The original financial statements, brokerage statements, and/or any other proof regarding funds on deposit;

2. The **original cancelled checks** or **imaged copies of the original cancelled checks** and the **monthly financial statements** from all financial institutions. The monthly statements are necessary as transactions may now be debited directly from the account;

3. A copy of the latest **IRS Return** or a statement that no taxes are due;

4. A **Physical/Mental Statement** by the fiduciary as to the respondent's current physical and mental condition (form available from Clerk);

5. A **Corporate Surety Statement** that the bond is in force or the cancelled check indicating the latest bond premium has been paid, if applicable in this matter (form available from Clerk);

6. A **Revised Property Management Plan**, if there have been changes from the previous court-approved plan (form available from Clerk);

7. A **Monetary Summary** indicating:

- the balance brought forward from the last accounting period (this will be \$0.00 for the first accounting);
- the total amount of receipted funds/assets during the accounting period;
- the total amount of disbursements/expenditures during the accounting period;
- the ending balance;

Note: Invested funds, such as certificates of deposit, annuities, etc. may be included as a receipted amount, if this is preferable. Make copies of the certificate or latest investment portfolio, etc. and attach it to the accounting for verification purposes. Gains and losses on investments should be considered appropriately as either a realized receipt or realized disbursement.

8. The accounting must be sworn before a Notary Public or a Deputy Clerk of the Probate Court;

9. A **Certificate of Service** must be attached to the accounting certifying that you have mailed or delivered a copy of it to all interested parties to this matter;

10. All accounting and accrued court costs should be paid when the accounting is filed.

You should list, by specific address, any and all real property the respondent has an interest in, and attach the list to the Accounting.

If the respondent has several different accounts, you should separate the accounts within your accounting and utilize the totals from the various accounts on the cover sheet. Use as many pages as necessary.

As fiduciary, you are responsible for paying all just debts of the respondent and collecting all monies and receivables due the respondent. You are also charged with the responsibility to appear on behalf of the respondent or make arrangements to defend the rights of the respondent in all respects.

You should also remember that you are being charged by the Court to properly manage the financial affairs of the respondent, therefore, you will be held to a high degree of responsibility as you account to the Court for your actions. You may want to seek professional help when setting up your accounts and when helping to plan for the respondent's future. Some additional basic things to remember about the Accountings are as follows:

1) Your financial institution must provide you with either the **original cancelled checks** or **imaged copies of the original cancelled checks and monthly financial statements**;

2) You must maintain separate accounts for the respondent's funds and you must never co-mingle the respondent's funds with your own funds. If the matter involves a spousal situation, your attorney will address this in the Property Management Plan as a specific plan must be detailed and approved by the Court;

3) You must never encroach upon the funds of the respondent for any extraordinary (usually over \$1,000.00) expenditure without consulting your attorney first. All expenditures must be deemed reasonable and necessary by the Court;

4) You should avoid questionable expenditures by obtaining a receipt when you make purchases on behalf of the respondent and make sure the receipt specifically details the service provided on the respondent's behalf and include the receipt with your accounting. You should also explain the nature of the expenditure if it is not obvious to the Court, such as when you make checks payable to individuals for services they perform;

5) You must never use cashier's checks or make a check payable to "Cash." Also, use a Debit Card only if your financial institution lists the specific name of the payee on the monthly statement.

It takes approximately thirty (30) to sixty (60) days for the accounting to be approved for recording. The accounting may be set for hearing if it contains various deficiencies.

**Property Management Plan:** As fiduciary, you are responsible for managing the assets of the respondent to the best of your ability and judgment, always acting in the best interest of the respondent. At the hearing, a Property Management Plan was mostly likely adopted by the Court, unless special circumstances dictated otherwise. This plan is to advise the Court as to the types of investments that are planned on behalf of the respondent and details various other issues. Any changes in this plan must be approved by the Court. Your attorney must file a Motion with the Court and a hearing set before any changes in this plan can take place. For example, if the plan calls for investments to be in certificates of deposit, changing from one bank to another bank for better rates does not need court approval. However, changing the type of investment, such as going from a certificate of deposit to a traded stock, would require court approval.

**Respondent's Real Property:** As fiduciary, you cannot make arrangements to sell any real property without court approval. To do so, your attorney must file the proper petition and the Court, in its discretion, may appoint a Guardian ad litem to investigate any sale of real property.

**Respondent's Personal Property:** As fiduciary, you should consult your attorney before any personal property is sold or discarded. Neither you, any relative, your attorney, the guardian ad litem, nor any other close acquaintance of the respondent, may purchase the property of the respondent without court approval, thus avoiding any conflict of interest. Whenever any property of the respondent is distributed, the person receiving the property must sign a receipt which must be filed with your Annual Accounting. Be sure to consult your attorney before you sell or discard any of the respondent's personal property.

**Encroachments:** Should you ever have to encroach upon the funds or assets of the respondent for anything other than what is already approved by the Court, your attorney must petition the Court to allow for the encroachment. You should keep in mind that it is your duty to try and preserve the assets of the respondent and not to allow for various unnecessary expenses regarding the care and maintenance of the respondent.

**Final Settlement:** Upon the death or restoration of rights of the respondent, if you are a Conservator, or upon the reaching of the age of majority of the respondent, if you are a Guardian, you must prepare and file a Final Settlement as to your fiduciary accounts with the Clerk. This Final Settlement cannot be waived; therefore, if the Court waived the Annual Accountings at the beginning, you must continue to maintain proper records so that you may use this information in preparing your Final Settlement. You must basically "inventory" the assets of the respondent on the Final Settlement if annual accountings were

previously waived.

## Other Items of Interest

**Removal Or Resignation As Fiduciary:** Please be aware of the fact that you can be removed as the fiduciary at any time the Court determines that you are not properly performing your duties. Should you ever wish to resign as the fiduciary, your attorney must file the proper petition with the Clerk, a court hearing will be set, and you must prepare and file a Final Settlement as to your accounts.

**Court Costs:** All court costs are generally due and payable at the time any pleadings or other court documents are filed. If payment is not made at the time of filing, any such cost shall accrue as an unpaid cost, and the Clerk will generate a cost bill on an annual basis to collect all outstanding accrued costs. It is important to remember that there may be additional and periodic court costs which will become due in these cases above and beyond the initial filing fee. Although additional costs are typically minimal in any given year, the amount of accrued costs in any given year is entirely dependent on the number and nature of any pleadings which are filed in the case. Court costs are subject to change without notice and are determined by statute, not by the Clerk. It is expected that all accrued court costs will be paid at the time of your annual accounting or annual status report unless other arrangements have been made in advance.

**Statutory and Court-Ordered Deadlines:** It is very important for you to realize that the Clerk's office is charged with continually monitoring its cases. Failure to timely perform some of these duties may result in "Notices" and "Citations to Appear" being either mailed or served on you. The Court may also issue an "Order for Show Cause" for you to appear for failure to perform your duties. Failure to properly account for the assets to which you have been charged may also result in the Court ordering a judgment against you for the value of the assets, thus making you personally responsible. The court costs for these procedures may also be assessed against you.

**Other Issues:** Please be advised that there are too many issues related to your duties as fiduciary which cannot be fully detailed in this procedural guide. Even though the information provided in this guide is substantial, there is an enormous amount of information and issues, both legal and non-legal, which are not discussed here.

**Other Duties:** Remember that all documents should be photo-copied and mailed or delivered to all interested parties of this matter as they are filed in the Clerk's office. All correspondence with the Clerk's office should be in writing and must include the docket

number. You must notify the Clerk's office in writing of any and all address changes. The mailing address is located on our "Contact Us" page.